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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. DANA GLENN RYE, Defendant and Appellant.	D074454 (Super. Ct. No. RIF1410705)

APPEAL from a judgment of the Superior Court of Riverside County, Bernard Schwartz, Judge. Affirmed and remanded with directions.

Patricia L. Brisbois, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Steve Oetting and Daniel J. Hilton, Deputy Attorneys General, for Plaintiff and Respondent.

In a first trial, a jury convicted Dana Glenn Rye of possession of child pornography but could not reach a verdict on numerous child sex crimes. In a subsequent bench trial, Rye was convicted of 17 counts of lewd and lascivious acts upon a child under the age of 14 years (Pen. Code,[1] § 288, subd. (a); counts 1, 2, 8, 9, 10, 11, 13, 14); oral copulation or sexual penetration with a person under the age of 10 years (§ 288.7, subd. (b); counts 3, 4, 6), sexual intercourse or sodomy with a person under the age of 10 years (§ 287, subd. (a); counts 5, 7) and lewd and lascivious acts upon a child under the age of 16 years and more than 10 years younger than him (§ 288, subd. (c)(1); counts 15, 16, 17). The court sentenced Rye to a determinate term of 23 years four months plus an indeterminate term of 95 years to life.

Rye contends that in the second trial the court erroneously: (1) denied his motion to represent himself under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*); (2) admitted into evidence his interview statements to police in violation of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*); and (3) directed the prosecutor to amend the information to increase the offense charged in count 7. He further contends the abstract of judgment contains several clerical errors. We affirm the judgment but remand for the court to correct the abstract of judgment as set forth below.

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1 Undesignated statutory references are to the Penal Code.

DISCUSSION

As Rye does not challenge the sufficiency of the evidence supporting his convictions, we need not recount the underlying facts in detail. The victim's mother and Rye were married and later divorced. When the victim was about 17 years old, she told someone that Rye had molested her. A few days later, that person told the victim's mother and filed a police report.

The victim's mother and sister testified Rye treated the victim preferentially and spent more time with the victim than with the sister, who he called derogatory names. The sister testified that when she was 13 or 14 years old, Rye allowed her to drink alcoholic beverages. The victim's mother testified that when the victim was young, Rye would buy her "inappropriate things . . . adult, not child undergarments. Dresses that were adult dresses, not children dresses. Very revealing stuff. And then just whatever [she] wanted. iPhones, iPad . . . whatever. Whatever she wanted, she got." The victim's mother further testified that she believed Rye's counsel in the divorce proceedings had improperly persuaded her to sign away her right to half of Rye's pension, but she has not attempted to recover that money after the divorce.

The victim testified that in 2006, when she was nine years old, Rye began touching her breasts and vagina. Rye gave her alcohol starting when she was around 10 or 11 years old. Shortly after her 10th birthday, he made her orally copulate him, threatening to kill her, her sister and her mother if she told anyone. A few weeks later, he penetrated her digitally or with a sex toy, and had sexual intercourse with her. This

became Rye's regular practice with her until she after she turned 16 years old. Rye bought her lingerie, sex toys, pornographic videos and handcuffs for use in their sexual activities. The prosecutor asked the victim at trial, "How often did [sexual relations] happen?" She replied, "Once I got accustomed to it, it would either happen once a week, twice a week, or sometimes it happened more. It just really depended on what [Rye] wanted." She added that if Rye was "stressed," sometimes it increased to four or five times a week. The victim testified Rye disowned her after she became more independent and stopped complying with his sexual desires.

A psychologist testified that certain individuals groom their sexual assault victims and the victims sometimes compartmentalize their abuse and delay reporting incidents of abuse because they doubt anyone will believe them.

I. *Faretta Motion*

Rye contends the court abused its discretion by denying his motion to represent himself during the second trial. He specifically contends the court erroneously relied on his lack of legal experience. He further argues: "The crux of [Rye's] complaint about counsel's performance was the lack of adequate cross-examination of key witnesses relating to issues of credibility. Counsel's abbreviated presentation of a defense in the second trial paled in comparison to the defense presented in the first trial. [Rye] expressed his concerns in this regard to the court, and it is apparent from the record that he wanted to present additional evidence to impeach [the victim's] and her mother's credibility—the core component in the case."

A. *Background*

After the court denied Rye's motion to relieve his counsel under *People v. Marsden* (1970) 2 Cal.3d 118, Rye moved to represent himself under *Faretta*. The court gave Rye a pro per form to fill out and scheduled a hearing for the next day. At the hearing, Rye maintained he wanted to represent himself, explaining he did not believe he was "being represented to the fullest." He pointed out that his counsel cross-examined the victims less in the second trial than in the first one. Rye claimed there were "numerous things" and "numerous videos" that counsel had not presented to the court; therefore, he sought to recall all the witnesses for further cross-examination. Rye also stated he would not be seeking a continuance.

After hearing counsel's account of his strategy, the court considered each of the factors outlined in *People v. Windham* (1977) 19 Cal.3d 121 (*Windham*), and exercised its discretion to deny the motion, finding nothing deficient about the quality of trial counsel's representation. It pointed out trial counsel clearly had "tactical and strategic reasons" for cross-examining each witness less. The court concluded Rye had shown a tendency to substitute counsel. Next, the court disagreed that Rye's request to cross-examine the witnesses further and introduce videos into evidence were valid reasons to grant his request to represent himself. Finally, the court pointed out Rye's motion was untimely as the trial was almost ended: "In fact, the People would have rested yesterday, but for a couple of additional witnesses testifying today."

The court also referred to possible delay if it granted Rye's motion: "And while, Mr. Rye, I know you've indicated that you're ready and prepared to proceed [], my understanding is in our discussion yesterday when we talked about your pro per status that you do not have any legal training and you've never represented yourself before. And so I can't imagine—I don't think it takes a great deal of speculation that there will be instances in which you will need time to go through the law library and research and review different areas, whether it be for purposes of questioning witnesses or whether it be for proceeding with your closing argument, or for that matter, [a section] 1118 motion, which you probably—I don't know if you know what that is. But in the event that one such motion was made, I'm assuming you would need some research as well. And that certainly would cause [] delays. [¶] . . . And we've indicated that tomorrow would be the last day for trial. And if it were to go an extra day, it wouldn't be the end of the world. But at some point, obviously, this department has to free itself up to handle other matters that are also pending. [¶] So I do have some concerns that there may be delays that you don't even know in your own mind, sir, yet, given the fact that you do not have that legal knowledge or legal basis behind you. So that is certainly of a concern. [¶] In addition, while you've indicated yesterday something slightly different than today about the witnesses that you wanted to call back, the concern that I have is [] that on many of those witnesses, if not all, we would need to have a hearing first to determine whether or not there are valid issues for you to go into. I certainly have had sufficient experience with pro pers in the past who ask questions. Those questions are often objected to because they are not on proper legal grounds, and it takes somewhere between three and

five times as long to get a question out, if at all, because the questions are not being asked in the correct fashion. And so all of those things, of course, also constitute further delays down the road." The court concluded that to grant the request "would be a disruption in this trial."

B. *Applicable Law*

In *People v. Buenrostro* (2018) 6 Cal.5th 367, 425-426, the California Supreme Court reviewed the applicable law: In *Faretta*, *supra*, 422 U.S. 806, the United States Supreme Court held that the Sixth Amendment to the United States Constitution gives criminal defendants the right to represent themselves. Following *Faretta*, in *Windham, supra,* 19 Cal.3d 121, the court considered questions concerning the timing of a defendant's self-representation request. It held that "in order to invoke the constitutionally mandated unconditional right of self-representation a defendant in a criminal trial should make an unequivocal assertion of that right within a reasonable time prior to the commencement of trial." (*Id.* at pp. 127-128.) Otherwise, "once a defendant has chosen to proceed to trial represented by counsel, demands by such defendant that he be permitted to discharge his attorney and assume the defense himself shall be addressed to the sound discretion of the court." (*Id.* at p. 128; accord, e.g., *People v. Bradford* (1997) 15 Cal.4th 1229, 1365 ["[A]lthough in a criminal trial a defendant has a federal constitutional, unconditional right of self-representation, in order to invoke that right, he or she must make an unequivocal assertion of that right within a reasonable time prior to the commencement of trial."].)

The California Supreme Court has held that "timeliness for purposes of *Faretta* is based not on a fixed and arbitrary point in time, but upon consideration of the totality of the circumstances that exist in the case at the time the self-representation motion is made. An analysis based on these considerations is in accord with the purpose of the timeliness requirement, which is 'to prevent the defendant from misusing the motion to unjustifiably delay trial or obstruct the orderly administration of justice.' " (*People v. Lynch* (2010) 50 Cal.4th 693, 724.) In exercising its discretion to grant or deny an untimely self-representation request, we have held the trial court should consider, among other factors, "the quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion." (*Windham, supra,* 19 Cal.3d at p. 128, 137.) When a court denies an untimely request, its ruling is reviewed for abuse of discretion. (See *People v. Valdez* (2004) 32 Cal.4th 73, 103.)

C. *Analysis*

We conclude the court did not abuse its discretion by denying Rye's motion to represent himself. The trial was in its final stage and, contrary to Rye's claim he did not need a continuance, as a pro per litigant, he likely would cause trial delays by recalling several witnesses and introducing certain videos into evidence. (See *Windham, supra,* 19 Cal.3d at p. 128, fn. 5.) Although Rye emphasizes that the court referred to his lack of legal expertise, that was not a significant consideration in the court's analysis. Understood in context, the court was merely pointing out that some delay was inevitable

because Rye lacked legal knowledge. It is well established that a court does not abuse its discretion by denying a midtrial *Faretta* motion that would result in delaying ongoing trial proceedings. (*Valdez, supra,* 32 Cal.4th at p. 103; *People v. Clark* (1992) 3 Cal.4th 41, 110.)

Rye argues he was prejudiced by the court's ruling because: "[The victim's] testimony about the video clips presented at the first trial showed her awareness of the importance of [Rye's] pension at the time she made her accusations against [Rye] despite claims to the contrary. . . . At the first trial, defense counsel had been able to show that although [the victim] claimed not to really be aware of the retirement or child support issues when she disclosed [details of the sex crimes], the video evidence showed otherwise. In the first trial, she denied knowing appellant had cut her out of his retirement, but then she said she learned about this from her mother. Impeaching [the victim] with the videos and her prior testimony in the second trial would have cast her and her mother's testimony about the importance of the retirement pension in a much different light as a possible motive to make up the accusations against [Rye]. In addition, evidence that [the victim] was manipulative and had been caught lying at school about plagiarizing a paper she was required to write as a disciplinary measure also would have cast her credibility in a different light in the second trial as it had in the first trial."

The issues of Rye's pension, his disowning of the victim and the victim's credibility were raised at trial. Thus, it is not reasonably probable the court would have reached a different verdict if Rye had been allowed more time to recall the witnesses for cross-examination on those issues, or for admission of the videos into evidence.

Abundant evidence supported the verdict: the testimony of the first person to whom the victim disclosed the sexual crimes, the victim and that of the doctor who testified regarding delayed disclosure. Further, the victim's sister and mother pointed to Rye preferring the victim over her sister, and to his allowing the girls to have alcohol at an early age, and corroborated the victim's testimony on those points.

II. *Admission of Rye's Statements to Police*

Rye contends the court erroneously failed to suppress the statements he made to police at the police station after responding equivocally to *Miranda* warnings. He claims that because police failed to ask clarifying questions, he did not voluntarily waive his *Miranda* rights.

A. *Background*

Detective Salisbury told Rye at the start of the interview that he had obtained a warrant to search Rye's vehicle and property. Rye agreed to accompany police during the search. The detective told Rye that someone had accused him of a sex crime and added, "Before I even read your rights. If I ask you a question, you don't wanna answer, you can say, 'I don't wanna answer that question.' " Rye answered, "Okay." The detective next read the *Miranda* rights, pausing after each one to ask if Rye understood it. Rye confirmed that he understood each one. The detective asked him, "Having these rights in mind are you willing to waive them, set them aside and answer whatever question you wanna answer about the information that I tell you?" Rye answered, "Fifty-fifty. I—I mean, I don't wanna hide anything, but I don't know enough about what's going on." The detective reiterated, "[I]f I ask you a question that you don't wanna answer, you can say,

'I don't wanna answer that.' Rye replied, "Well, I mean, uh. . ." The officer interjected: "In—in—in other words, my—my first question is gonna be who—who's living at the property with you? Is anyone living there?" Rye responded, "Nobody's living there." The interview proceeded without Rye invoking his *Miranda* rights.

At different points in the interview, the detective left Rye alone in the room. Rye was recorded speaking to himself and saying among other things: "I'm done. (Unintelligible). I'm gonna (unintelligible). Enjoy your last Dr. Pepper, it's good though." Rye also said, "What we need is counseling now, not later. Oh, oh. We all need some serious counseling. . . . Sit in jail. And I'll quit smokin', there's a plus. A plus I found so far. Guess it's time [to] quit smoking. I guess this is, like, God's like, timing to quit smoking. Boo-yah."

In his motion to suppress, defense counsel argued Rye's statement that he was "fifty-fifty" about proceeding with the police interview was equivocal and therefore the detective should have clarified whether Rye wanted to invoke his *Miranda* rights. Defense counsel also argued that Rye's comments to himself were largely unintelligible and appeared "rambling and covering a wide range of subjects in that lengthy soliloquy." Counsel added, "[O]bviously, there's no crime for thinking certain things. And what Mr. Rye appears to be doing in that interview room over that lengthy period of time is to be thinking and verbalizing his thoughts. Just because he thinks something doesn't make it true. . . . And the fact that these verbalizations are so wide-ranging and so loosely connected, we run the risk that the Court takes him literally at what he's saying in his verbalization of his thoughts and uses things that might be just fleeting ideas or

suppositions or hypotheticals in his mind and uses those as—as actual evidence of what his actual thoughts are to show what his actual actions are."

The court denied Rye's motion to suppress all of his recorded statements at the police station: "So with respect to the initial inquiry here, the court does not find that there was an invocation and the court does not find that there was any further clarification to be made at the time the questioning occurred, that Detective Salisbury received an implied waiver of his—of Mr. Rye's rights, and it was certainly within his rights to continue with the interview. [¶] So then we move to the second part of it, which is the soliloquy. And clearly there's no *Miranda* violation here because there's no questioning taking place. The defendant is certainly in custody, but he is not subject to interrogation. And so subject to, obviously, certain foundational aspects being met by the People . . . all of those statements are clearly statements that are just being made by the defendant at his own—on his own volition."

B. *Applicable Law*

To counteract the coercive pressure inherent in custodial surroundings, " '*Miranda* announced that police officers must warn a suspect prior to questioning that he has a right to remain silent, and a right to the presence of an attorney. [Citation.] After the warnings are given, if the suspect indicates that he wishes to remain silent . . . [or] wants an attorney, the interrogation must cease. . . . Critically, however, a suspect can waive these rights. [Citation.] To establish a valid waiver, the State must show [by a preponderance of the evidence] that the waiver was knowing, intelligent, and voluntary under the "high

standar[d] of proof for the waiver of constitutional rights." ' " (*People v. Williams* (2010) 49 Cal.4th 405, 425 (*Williams*).)

With respect to an initial *Miranda* waiver before commencement of interrogation (as opposed to a subsequent invocation of the right to counsel during questioning), there is no "predetermined form" for a valid waiver. (*Williams, supra,* 49 Cal.4th at pp. 427-428.) Waiver may be implied. A defendant's willingness to answer questions after acknowledging an understanding of *Miranda* rights will often constitute an implied waiver under the totality of the circumstances. (*Berghuis v. Thompkins* (2010) 560 U.S. 370, 383-384; *People v. Nelson* (2012) 53 Cal.4th 367, 375.)

In *Williams*, the defendant answered yes when asked if he gave up his right to remain silent, but when the police then asked if he wished to give up the right to speak to an attorney and have one present during questioning, the defendant answered with a question: " 'You talking about now?' " (*Williams, supra,* 49 Cal.4th at p. 426.) The officer asked, " 'Do you want an attorney here while you talk to us?' " The defendant said yes. An officer said, " 'You don't want to talk to us right now.' " It was a Saturday afternoon. The defendant said, " 'Yeah, I'll talk to you right now.' " The officer said, " 'Without an attorney.' " The defendant said, " 'Yeah.' " The officer said, " '[L]et's be real clear. . . . [I]f you want an attorney here while we're talking to you we'll wait till Monday and they'll send a public defender over, unless you can afford a private attorney . . . .' " The defendant said, " 'No I don't want to wait till Monday' "—he wanted to " 'talk now.' " (*Ibid.*) The officer asked, " '[D]o you want to talk now because you're

free to give up your right to have an attorney here now?' " The defendant said "yes." (*Ibid.*)

Williams held the defendant did not invoke his right to counsel. (*Williams, supra,* 49 Cal.4th at pp. 426, 429-430.) The Supreme Court said the defendant's question, "You talking about now?" suggested that "his willingness to waive the assistance of counsel turned on whether he could secure the presence of counsel immediately. This suggestion is reinforced by his answers to the officers' requests for clarification." (*Id.* at p. 426.) Once the question whether counsel could be provided immediately had been resolved, the defendant had not the slightest doubt that he wished to waive his rights and commence the interrogation. (*Id.* at p. 427.)

To be an effective invocation, the suspect's assertion of the right to remain silent or the right to counsel must be plain and unambiguous. (*People v. Martinez* (2010) 47 Cal.4th 911, 947-948 [" '[i]n order to invoke the Fifth Amendment privilege after it has been waived, and in order to halt police questioning after it has begun, the suspect "must *unambiguously*" assert his right to silence' "]; *People v. Stitely* (2005) 35 Cal.4th 514, 535 [same]; see *Berghuis v. Thompkins, supra,* 560 U.S. at p. 381 ["[t]here is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel"].) The inquiry is an objective one: An assertion of the right to remain silent is ambiguous, and thus not effective, if a "reasonable officer could interpret [the] defendant's statement as" demonstrating an intent other than "terminat[ing] the interrogation." (*Williams, supra,* 49 Cal.4th at p. 434; see *Stitely,* at p. 535 ["It is not enough for a reasonable police officer to

understand that the suspect might be invoking his rights. [Citation.] Faced with an ambiguous or equivocal statement, law enforcement officers are not required . . . either to ask clarifying questions or to cease questioning altogether."].)

C. *Analysis*

Here, Rye's comment to the detective, "Fifty-fifty . . . I don't wanna hide anything, but I don't know about what's going on" was ambiguous; however, the detective was not required to end the interrogation or ask questions to clarify whether Rye wanted to invoke his *Miranda* rights. (*Berghuis v. Thompkins supra*, 560 U.S. at pp. 381, 388-389.) The detective reasonably could have interpreted that statement as meaning that Rye was prepared to disclose some information because he said he did not want to hide anything. Therefore, the detective reassured Rye that he had the right to refuse to answer any specific question. Once the detective asked Rye a first question, Rye elected to answer it and continued talking to the officer voluntarily, thus waiving his *Miranda* rights. "A valid waiver of *Miranda* rights may . . . be inferred from the defendant's words and actions." (*People v. Cunningham* (2015) 61 Cal.4th 609, 642.) "A suspect's expressed willingness to answer questions after acknowledging an understanding of his or her *Miranda* rights has itself been held sufficient to constitute an implied waiver of such rights." (*People v. Sauceda-Contreras* (2012) 55 Cal.4th 203, 218-219.)

III. *The Third Amended Information*

Rye contends the court violated the constitutional doctrine of separation of powers by directing the prosecutor to amend the information as to count 7.

A. *Background*

At the close of the prosecution's case, the defense made a section 1118.1 motion for judgment of acquittal. In denying the motion, the court stated that the People had charged count 7 as oral copulation or sexual penetration under section 288.7, subdivision (b); however, the victim's trial testimony showed that Rye committed sexual intercourse, a separate offense under section 288.7, subdivision (a). The court told the prosecutor: "And so the court believes to conform to proof, this should be a [section] 288.7 [subdivision] (a) [offense]." The prosecutor later sought clarification of the court's statement, stating, "Because the People are doing an amended information, would you like me to change it as well on the information?" The court requested input from defense counsel, who stated, "Well, we're going to object at this point. But we submit to the court's ruling on whether it conforms to proof." The court reiterated to the prosecutor, "I do think that it did conform to the proof based on my review of my notes. So if you could make that change as to count 7. And then consistent with our discussion, file the third amended information." The People complied.

B. *Applicable Law*

Section 1009 provides: "The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment,

may order the case submitted to the same or another grand jury, or a new information to be filed."

It is well settled that the prosecuting authorities, exercising executive functions, ordinarily have the sole discretion to determine whom to charge with public offenses and what charges to bring. (E.g., *People v. Eubanks* (1996) 14 Cal.4th 580, 588-589; *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.) This prosecutorial discretion to choose, for each particular case, the actual charges from among those potentially available arises from " 'the complex considerations necessary for the effective and efficient administration of law enforcement.' " (*People v. Keenan* (1988) 46 Cal.3d 478, 506.) The prosecution's authority in this regard is founded, among other things, on the principle of separation of powers, and generally is not subject to supervision by the judicial branch. (*People v. Wallace* (1985) 169 Cal.App.3d 406, 409.) The trial court's accession to an amendment to the information, including the addition of counts, is reviewed for abuse of discretion. (*People v. Arevalo-Iraheta* (2011) 193 Cal.App.4th 1574, 1581.)

C. *Analysis*

We conclude the court did not err by suggesting to the prosecutor that she amend the information according to proof. It was the prosecutor who informed the court she would elect to amend the information. Even if the court directed the prosecutor to make the amendment, there would be no error. "The argument that the trial court has no authority to amend an information sua sponte is belied by the express language of the statute: 'The court . . . may order . . . an amendment of an indictment, accusation or information.' " (*People v. Carrasco* (2006) 137 Cal.App.4th 1050, 1057 [permitting the

court to amend the information to change an attempted robbery charge to robbery].) Rye cannot claim he was prejudiced by the amendment; rather, as he correctly pointed out in his opening brief, the trial evidence supported the amendment: "Notably, [the victim] testified that the oral sex, digital penetration and sexual intercourse occurred with regular frequency once or twice a week and as often as four or five times per week depending on how stressed [Rye] was. . . . Given that generic testimony, the prosecutor could have exercised her discretion to charge even more violations of section 288.7, subdivisions (a) and (b), but she did not."

Rye relies on *People v. Smith* (1975) 53 Cal.App.3d 655, in which the appellate court ruled that the trial court had exceeded its authority in "accepting a plea of guilty to a lesser nonincluded but related offense over the prosecutor's objection." (*Id.* at p. 660.) That case is distinguishable as the court here did not take unilateral action to amend the information, and the prosecutor did not object to the amendment. Rye also relies on *People v. Simpson* (2014) 233 Cal.App.4th Supp. 6, which is distinguishable. There, the trial court "did not grant a motion to amend by the prosecution, but rather *itself* amended the complaint by adding to the notice to appear the unsafe lane change violation. As such, it exceeded the statutory authority given to it by [] section 1009. Moreover, . . . permitting a court *itself* to amend a notice to appear or a complaint would be unconstitutional based on a violation of separation of powers." (*Id.* at p. Supp. 10.) Here, the court did not amend the complaint itself but instead permitted the prosecution to do so.

IV. *Corrections to the Abstract of Judgment*

The People concede and we agree the abstract of judgment should be corrected in the following ways: First, all counts except count 12 were the result of a bench trial. Second, the court ordered Rye to pay one of the victims, C.R., $840.50 in restitution, not $850.50. Third, the date of the count 12 conviction was January 26, 2016, not April 17, 2017. Fourth, count 12 was committed in 2013 and 2014, not 2006. Fifth, counts 3 through 7 occurred in 2007; counts 8 through 10 occurred in 2008-2019, counts 11, 13 and 14 occurred in 2009-2010, counts 15 through 17 occurred in 2012-2013, and count 18 occurred in 2013.

DISPOSITION

The judgment is affirmed. The trial court is directed to amend the abstract of judgment consistent with this opinion and forward a certified copy to the Department of Corrections and Rehabilitation.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.